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IN THE
SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM 1983
CASE NO. _____

MARTHA B. GAUNCE, APPELLANT,
vs.
PIERRE H. deVINCENTIS, and JACK T. PARRISH,
APPELLEES.

Appeal from the United States Court of Appeals
for the Seventh Circuit
No. 81-1769
Appealed from the United States District Court for the
Northern District of Illinois, Eastern Division
No. 80-C-6417

JURISDICTIONAL STATEMENT

Revised

MARTHA B. GAUNCE,
In Propria Persona
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PRINTED BY: Pacific Typesetting Company, 136 South Myrtle Avenue, Monrovia, California 91016

Office of the Clerk
Supreme Court of the United States
1 First Street, N. E.
Washington, D. C. 20543

Re: Martha B. Gaunce v. Pierre H. deVincentis, et al.,
N.D.Ill. 80-C-6417
7th Cir. 81-1769

Dear Sir:

As attorney for Martha B. Gaunce in the above-captioned matter, kindly enter the appearance of:

Martha B. Gaunce

appearing before this Court, *In Propria Persona.*

Martha B. Gaunce
9348 Santa Monica Blvd. #101
Beverly Hills, California 90210
Telephone: (213) 273-3033

Sincerely,

/s/ Martha B. Gaunce

Martha B. Gaunce
In Propria Persona

QUESTIONS PRESENTED BY THE APPEAL.

(a) Are agency personnel, statutorily prescribed to conduct an administrative hearing, permitted to allow an alleged counsel for the agency to act in place of agency personnel at an administrative hearing?

(b) Is it necessary to exhaust administrative remedies prior to seeking damages for the acts of persons subverting administrative procedure to the level of constitutional denial of due process?

(c) Is it a denial of due process for a district court judge to grant a motion for summary judgment untimely?

Pursuant to rule 15.1(d) of the Rules of the Supreme Court, to the knowledge of appellant there are no official or unofficial reports of any opinions delivered in the courts or administrative agency below.

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2. Butz v. Economou, 438 U.S. 478, 98 S.Ct. 2294, 57 L.Ed2d 895 (1978), cited on page 3;

3. Davis v. Passman, 442 U.S. 228, 60 L.Ed2d 846, 99 S.Ct. 2264, cited on page 3;

4. In re Potlach Forests, 240 P2d 242, 72 Idaho 291, cited on pages 6 and 8;

5. Nixon v. Fitzgerald, 102 S.Ct. 2690 (1982), cited on page 3;

6. Smith v. Department of Registration & Ed., 1952, 412 Ill.332, 106 N.E.2d 722, cited on page 3.

TABLE OF AUTHORITIES

Article III, Section 1 of the Constitution of the United States, cited on page 1;

Amendment V, Constitution of the United States, cited on pages 1 and 13;

Title 5, United States Code, Section 554, cited on page 13;

Title 14, Code of Federal Regulations, Section 13.19, cited on page 6, et seq.

JURISDICTIONAL STATEMENT[1]

STATEMENT OF THE GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES IS INVOKED:

1. The jurisdiction of the Supreme Court of the United States is founded upon Article III, Section 1 of the Constitution, wherein is stated that: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Due process of law is a constitutional guarantee stated in the Constitution of the United States, Amendment V.

This action at law is based upon diversity of citizenship, pursuant to Title 28, United States Code, Section 1332.

2. Complaint was filed in the United States District Court for the Northern District of Illinois, Eastern Division, on December 3, 1980. (See Exhibit 1, page 15) Amended Complaint No. 2 was filed on April 8, 1981. (See Exhibit 2, page 18).

Mrs. Gaunce states in her Complaint a claim for relief for civil conspiracy to defraud, fraud, and abuse of power. (See Exhibit 1, page 15.

In her Amended Complaint No. 2 she claims federal court jurisdiction for the denial of due process of law. (See Exhibit 2, page 18).

The action at law was dismissed on Motion for Summary Judgment granted to the defendants dated May 6, 1981. (See Exhibit 6, page 33).

Notice of appeal was filed in the United States Court of Appeals for the Seventh Circuit on May 14, 1981.

Judgment of the United States Court of Appeals for the Seventh Circuit was entered June 10, 1983. (See Exhibit 5, page 25).

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1 All parties to the proceeding in the United States Court of Appeals for the Seventh Circuit are listed in the caption.

The United States Court of Appeals for the Seventh Circuit has erred in concluding that effective means for judicial review are ultimately available where the constitutional claims can be raised. The issue of the constitutionality of the administrative process is not in question. The conduct of irresponsible and unqualified persons purporting to be officially authorized to conduct an administrative hearing is in question.

The United States Court of Appeals for the Seventh Circuit has erred in concluding that this action at law is an appeal from a final decision of an administrative agency. At issue before the appellate court was essentially whether the defendants, one of whom it appears was not an employee of the agency, are immune from a monetary claim for damages.

Appellant rests her claim directly on the due process clause of the Fifth Amendment, claiming that her rights under that amendment have been violated and that she has no effective means other than in the federal judiciary system to seek redress of these rights; she is an appropriate party to invoke the District Court's general federal-question jurisdiction to seek relief, and she therefore has a cause of action under the Fifth Amendment.

A *Bivens* cause of action is a judicially created federal cause of action against federal officials in their personal capacities for injuries caused by constitutional torts. The *Bivens* action was created by the Supreme Court in 1971 in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388, 29 L.Ed2d 619, 91 S.Ct.1999. The Court there filled a legislative void and ruled that a violation of the fourth amendment by "a federal agent acting under color of his authority gives rise to a cause of action for damages consequent upon his unconstitutional conduct."

In 1979 the Supreme Court allowed a plaintiff a cause of action for damages under the fifth amendment. *Davis v. Passman,* 442 U.S. 228, 60 L Ed 2d 846, 99 S Ct 2264. All officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. *Id.* A federal right of action for damages arises directly under the United States Constitution when the Fifth Amendment's due process clause is violated. *Id.*

Chief Justice Burger's concurring opinion in *Nixon v. Fitzgerald,* 102 S.Ct. 2690 (1982) states at 2709: The four dissenting members of the Court in *Butz v. Economou,* 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978), argued that all federal officials are entitled to absolute immunity from suit for any action they take in connection with their official duties. That immunity would extend even to actions taken with express knowledge that the conduct was clearly contrary to the controlling statute or clearly violative of the Constitution. Fortunately, the majority of the Court rejected that approach: We held that although public officials perform certain functions that entitle them to absolute immunity, the immunity attaches to particular functions – not to particular offices. Officials performing functions for which immunity is not absolute enjoy qualified immunity; they are liable in damages only if their conduct violated well-established law and if they should have realized that their conduct was illegal.

Due process of law presupposes a fair and impartial hearing before a fair and impartial tribunal. *Smith v. Department of Registration & Ed.,* 1952, 412 Ill. 332, 106 N.E.2d 722.

Page 50: Contention # 5 – "No response to the government's Supplemental Memorandum in Support of Defendants' Motion to Dismiss or for Summary Judgment was entertained by the district court judge prior to the dismissal of the action by the district court judge at the status hearing of 22 April 1981 denying Mrs. Gaunce due process of law.

This issue was not addressed by the United States Court of Appeals for the Seventh Circuit.

And on page 80: Contention # 5: The court granted summary judgment to the defendants as stated in the Memorandum Opinion and Order. In point of fact, this is wrong. The district court made an untimely adjudication of the action upon the merits of the action.

The defendants' supplemental response, Supplemental Memorandum in Support of Defendants' Motion to Dismiss or for Summary Judgment was served upon Mrs. Gaunce by placing a copy in the United States mail on 10 April 1981. Twelve days later and upon the basis of arguments presented in such supplemental response the district court dismissed the action.

Rule 56(c), FRCP, provides: "The motion shall be served at least 10 days before the time fixed for hearing." In addition to the 10 days provided by Rule 56(c), *supra,* Rule 6(e), FRCP, provides an additional period of time of 3 days under certain enumerated circumstances, as follows: "Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

All prerequisites required by Rule 6(e) for the 3 day period to be added to Rule 56(c) are present in this case. The supplemental response was served upon Mrs. Gaunce by mail, and such supplemental response was a document to which Mrs. Gaunce was entitled to take the time limit within which to respond thereto prescribed by Rule 56(c), FRCP.

Consequently, Rule 6(e) provided Mrs. Gaunce with a period of time of thirteen days within which to prepare a response to the Motion for Summary Judgment as supplemented by the Supplemental Memorandum in Support of Defendants' Motion to Dismiss or for Summary Judgment.

Due process requirements of the Fifth Amendment to the Constitution of the United States mandate compliance with and conformity to the Federal Rules of Civil Procedure.

The cause was dismissed by the action of the district court judge 12 days after the date on which the supplemental response prepared by the government was entered of record.

The district court made an untimely adjudication of the action upon the merits of the action as no response to the government's Supplemental Memorandum in Support of Defendants' Motion to Dismiss or for Summary Judgment was entertained by the district court judge prior to the dismissal of the action by the district court judge at the status hearing of 22 April 1981 denying Mrs. Gaunce due process of law.

Additionally, Rule 56(c), FRCP, provides in part: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Mrs. Gaunce requested specific facts regarding the employment status of the defendants, Mr. deVincentis and Mr. Parrish, which were not responded to be the defendants and were, therefore, admitted as fact, pursuant to Rule 36(a), FRCP, the government entered into the record as fact the Notification of Personnel Action as evidence of the employment status of Mr. deVincentis. These are genuine issues of material fact. The defendants are not entitled to judgment as a matter of law.

FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED

Pursuant to Rule 15 of the Rules of the Supreme Court, Section 1(g), the pertinent fact material to consideration of the questions presented is: Was Pierre H. deVincentis an employee of the Federal Aviation Administration on July 18, 1980, or was he *an alleged counsel* on that date? He stated at the informal conference that he had no credentials. (See Complaint, page 15). He produced a business card. (See Exhibit 9, page 41).

The government produced at hearing of the status of the case in the district court on May 5, 1981 a document purporting to prove Mr. deVincentis had been employed by the agency as of July 14, 1980. (See Exhibit 11, page 42). This document was produced on a Word Processor and is capable of being reproduced at any time with the date of July 14, 1980 as the date of employment. Payroll records are recognized as substantial and reliable evidence of employment.[2] Brief for Appellant dated November 15, 1981 states on page 60 *et seq.* as follows: 14 CFR § 13.19 (d) (4) sets forth the requirement that the informal conference will be "with the FAA counsel." The implementing FAA Order 2150.3 § 1203 (e) (1) states that "The order representing the final FAA certificate action will be issued by an official authorized in FAR 13.19. Another attorney, with appropriate delegation may sign with a by-line under the name and title of such official. If the order is issued over the signature of an attorney other than such official, a written delegation authorizing the attorney to sign orders shall be sent to AGC-200. There is no such statement in evidence.

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[2] *In re Potlach Forests*, 240 P2d 242, 72 Idaho 291.

There appears to have been a misunderstanding by the United States Court of Appeals for the Seventh Circuit of the cause of action upon which jurisdiction of the court is based.

This action at law is based upon diversity of citizenship of appellant Gaunce and appellees deVincentis and Parrish, pursuant to Title 28, United States Code, Section 1332. Mrs. Gaunce at the time suit was filed in the district court was domiciled in the State of North Dakota, (See Exhibit 10, page 41) and deVincentis was domiciled in the State of Illinois. (See Exhibit 9, page 41) Mrs. Gaunce was unable to ascertain the citizenship of defendant Parrish.

The Complaint states that [during] an informal conference pursuant to 14 CFR § 13.19 (c) (4) . . . [Mrs. Gaunce] requested to see the credentials of Defendant Pierre H. deVincentis . . . [who] stated that he had no credentials. Defendant Parrish presented credentials (an FAA identification card bearing the FAA seal and a photographic likeness of himself) and stated that he was a General Aviation Specialist in Flight Standards. Defendant deVincentis then presented to [Mrs. Gaunce] a business card. Neither defendant presented evidence or supplied facts to support the violation of Federal Aviation Regulations (FARs) alleged in the Notice of Proposed Certificate Action, or clarification of the violations alleged in the Notice of Proposed Certificate Action. Defendant deVincentis stated that evidence was not to be divulged during the informal conference. The Order of Revocation signed by Pierre H. deVincentis was hand-delivered to [Mrs. Gaunce] at the end of the business day . . . (See Exhibit 1, page 15) et. seq.).

The Notification of Personnel Action produced by the agency and entered into evidence in the [district] court is not a written delegation of authorization to sign orders. Neither Mr. deVincentis nor Mr. Parrish is by title, "FAA Counsel." Mr. Carl B. Schellenberg, under whose name the Order of Revocation was signed by Mr. deVincentis, is by title, "Regional Counsel" with the authorization of the regulation to sign the document.

The Notification of Personnel Action is not valid documentation of employment as it is a form prepared on a Word Processor and can be back dated. Payroll records are valid documentation of employment, and payroll records were not entered into evidence by the government to substantiate the claim of the government employment by Mr. deVincentis. *In re Potlach Forests,* 240 P2d 242, 72 Idaho 291. Mr. deVincentis was not, on 18 July 1980, an employee of the FAA. Mr. deVincentis was not authorized to conduct the informal hearing held on 18 July 1980. Mr. deVincentis did not present any evidence to substantiate the claims of the agency that Mrs. Gaunce had violated any Federal Aviation Regulation. Mr. deVincentis did not present any witness or even pretend to know a witness exists to substantiate the claims of the agency that Mrs. Gaunce violated any Federal Aviation Regulation. Mr. deVincentis presented the business card of a practicing attorney at 1424 Wesley Avenue, Evanston, Illinois as his evidence of valid employment. The office of the Regional Counsel is located at 2300 East Devon Avenue, Des Plaines, Illinois.

Mrs. Gaunce was not permitted a response to the government's Supplemental Memorandum in Support of Defendants' Motion to Dismiss or for Summary Judgment, in which is contained the Notification of Personnel Action, as Defendants' Motion for Summary Judgment was granted untimely as stated in her Brief for Appellant, page 50 and page 80, *et. seq.* (See exhibit 8, page 38).

STATEMENT OF THE REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION, WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT, FOR THEIR RESOLUTION.

The Administrative Procedure Act[3] was legislated by the Congress to prevent the cause of action stated in the Complaint of Mrs. Gaunce.

The actions of the agency officials required by the Act to provide due process of law to the airmen who appear before the agency for consideration of their rights under the Constitution to due process of law in the adjudication by agency regulation are herein in question. It is not relevant to the consideration of this action that, as the appellate court stated in its decision, [there is a statute which] provides for giving deference to the F.A.A. and N.T.S.B., bodies possessing expertise in areas outside the conventional experience of judges. There is no area of expertise in the field of aviation involved in the instant action now before this court. This action is not before this court pursuant to 49 U.S.C. § 1486 as presumed by the appellate court.

Appellant seeks adjudication of the two separate and distinct phases of her actions at law: the denial of due process by agency officials, and adjudication of the regulation violations alleged by agency officials.

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[3] Codified in Title 5, Unites States Code, Sections 553, 554, 555, 556, 557, and 558.

The district court dismissed this action untimely. The appellate court addressed the issue being litigated at this time in the United States Court of Appeals for the Ninth Circuit. Case No. 82-7543. Appellant is hereby requesting permission to bring the actions of agency officials into this Court for determination of these actions as unconstitutional deprivation of the due process clause of the Fifth Amendment.

Respectfully submitted,

/s/ Martha B. Gaunce

Martha B. Gaunce
In Propria Persona
9348 Santa Monica Blvd. #101
Beverly Hills, California 90210

DATED: September 8, 1983.

EXHIBIT 1 – COMPLAINT

Gaunce vs. deVincentis, et al.,
Civil Action No. 80-C-6417

A. JURISDICTION

1. Jurisdiction of this court is founded on diversity of citizenship and amount. Plaintiff is a citizen of the State of North Dakota. Defendant Pierre H. deVincentis is a citizen of the State of Illinois. The citizenship of Jack T. Parrish, defendant, is unknown to plaintiff. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

B. Statement of Claim for Relief for civil conspiracy to defraud, fraud, and abuse of power.

I. First Cause of Action

2. On July 18, 1980 an informal conference pursuant to 14 CFR § 13.19 (c) (4), and Title 49 U.S.C. § 1429(a), implementing Public Law 85-726, known as the Federal Aviation Act of 1958, and its sections 313(c) and 609, commenced at approximately 9:45 a.m. in the Office of Regional Counsel, Federal Aviation Administration (FAA), 2300 East Devon Avenue, Des Plaines, Illinois 60018.

3. The participants in an informal conference pursuant to 14 CFR § 13.19 (c) (4) are to be:

(a) the [certificate] holder and

(b) the FAA counsel.

4. Present at the above-mentioned informal conference were:

(a) the plaintiff in this action, Martha B. Gaunce,

(b) the defendants in this action, Pierre H. deVincentis, and Jack T. Parrish.

5. Plaintiff requested to see the credentials of Pierre H. deVincentis, as he was not the person with whom she had been corresponding regarding the time, place, and discovery available to her before, during, or after the informal conference.

6. Defendant deVincentis stated that he had no credentials.

7. Defendant Parrish presented credentials, an FAA identification card bearing the FAA seal and a photographic likeness of himself, and stated that he was a General Aviation Specialist in Flight Standards.
8. Defendant deVincentis then presented to plaintiff a business card, Exhibit "A" attached hereto.
9. Neither defendant presented evidence or supplied facts to support the violation of Federal Aviation Regulations (FARs) alleged in the Notice of Proposed Certificate Action, Exhibit "B" attached hereto, or clarification of the violations alleged in the Notice of Proposed Certificate Action.
10. Defendant deVincentis stated that [any and all] evidence was not to be divulged during the informal conference, that evidence and witnesses would be brought to the hearing if the order to be issued was appealed to the National Transportation Safety Board (NTSB), that the evidence was based on witnesses and Air Traffic Control communications, and that plaintiff's "demand for documents has already been litigated – already been denied."
11. Defendant Parrish stated that although he knew the Departure Control Frequencies at Cleveland Hopkins Airport (where the alleged violations occurred), he would not divulge them to the plaintiff at that conference.
12. The Order of Revocation signed by Pierre H. deVincentis was hand-delivered to plaintiff at the end of the business day at 2300 East Devon Avenue, Des Plaines, Illinois 60018. Exhibit "C" attached hereto.
13. Defendant deVincentis had no authority to act as a designated agent of the Adminstrator, FAA.
14. Defendant Parrish acted outside the scope of his designated authority as an agent of the Administrator, FAA.
15. Defendants deVincentis and Parrish, falsely and fraudulently and with intent to defraud plaintiff, represented to plaintiff that they, each and severally, had been delegated the authority to conduct an informal conference arising under Title VI of the Federal Aviation Act of 1958, implemented by Title 49 U.S.C. § 1429, and 14 CFR § 13.13 (c) (4).

16. Defendants Parrish and deVincentis, falsely and fraudulently and with intent to defraud plaintiff, represented to the plaintiff, each and severally, that although no discovery had been previously presented to her in support of the government allegations of violation of FARs of the Notice of Proposed Certificate Action, no discovery was required by law to be presented to her at the informal conference.

17. Those representations were false in fact and known to be false by the defendants at the time they were so made, and in truth and in fact the agency's representatives are required by law:

a) to timely inform [the certificate holder] of the matters of fact and law asserted [in the Notice of Proposed Certificate Action], Title 5 U.S.C. § 554,

(b) [to provide] fairness in administration and the elimination of unjustifiable expense and delay, Rules of Evidence No. 102, and

(c) to provide plaintiff with the due process so demanded, Unites States of America Constitution, Amendment 5.

18. Plaintiff relied on the Order of Revocation issued to her.

(a) She sought adjudication in the United States Court of Appeals for the District of Columbia Circuit, Case No. 80-1839, which has been dismissed, and

(b) she is seeking adjudication of the Order of Revocation by the NTSB presently.[3]

II. Second Cause of Action

19. Defendant Parrish abused the power of his delegated authority as an agent of the Administrator, FAA, and effected injustice when he perverted an Act of Congress [Public Law 85-726] through the malicious and unfounded use of the informal conference to deny due process to the plaintiff.

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[3] Case no. 82-7543, U.S. Court of Appeals for the Ninth Circuit.

C. Prayer for Relief

20. By reason of the premises aforesaid plaintiff has suffered damages in the amount of two hundred million dollars. Plaintiff also demands judgment in the award of reasonable attorney fees, costs, and for such other, further or different relief as may be just and proper.

/s/ Martha B. Gaunce

Martha B. Gaunce, *pro se*
2 Delta
Romulus, Michigan 48174
313-281-1573

FILED: December 3, 1980

EXHIBIT 2 – AMENDED COMPLAINT

Gaunce vs. deVincentis, *et al.*
Civil Action No. 80-C-6417

It is apparent that the defendants do not understand the nature of the Complaint.

It is for the purpose of clarification only that the Complaint is hereby amended.

I. Plaintiff is arguing due process of law:

A. This Court has jurisdiction because it is a federal claim.

B. State law claim would be ancillary to the federal claim.

C. The Court would have jurisdiction, regardless of state law.

II. First Cause of Action

deVincentis and Parrish were unauthorized personnel engaged in a frolic of their own.

III. Second Cause of Action

A. The defendants conspired to deprive the plaintiff of due process of law by revoking her airman certificate without presenting any evidence of wrong doing.

B. The plaintiff's file of Civil Action No. 80-772 and No. 80-1839, attached to the Amended Complaint, document the inability of the plaintiff to be provided with the evidentiary material required to prepare her defense against the allegations of the Notice of Proposed Certificate Action, Exhibit B of the Complaint.

C. The plaintiff's file of Civil Action No. 80-772 and No. 80-1839 delineates the position of the government, consistently demonstrating its position that the plaintiff was not entitled to any evidence at any stage in the proceedings before the agency.

D. The plaintiff was denied the opportunity to obtain any evidence to substantiate or deny the allegations of the Notice of Proposed Certificate Action, Exhibit B of the Complaint.

E. The airman certificate of the plaintiff was revoked by the Order of Revocation, Exhibit C of the Complaint, without any evidence ever having been produced to allow a defense of the allegations of the Notice of Proposed Certificate Action, Exhibit B of the Complaint.

F. The allegations of the Notice of Proposed Certificate Action, Exhibit B of the Complaint, were and are unsupported by any evidence of wrong doing.

G. In order for the government to revoke an airman's certificate, violation of something must be proven, and the burden of proof is on the government not the alleged violator.

H. The burden of proof was and still is upon the government.

I. The government has wholly failed to prove violation of government regulation(s).

J. Plaintiff has been denied due process of law.

IV. Prayer for Relief

By reason of the premises aforesaid plaintiff has suffered damages in the amount of two hundred million dollars. Plaintiff also demands judgment in the award of reasonable

attorney fees, costs, and for such other, further or different relief as may be just and proper.

/s/ Martha B. Gaunce

Martha B. Gaunce, *pro se*
2 Delta
Romulus, Michigan 48174

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that delivery of the foregoing Amended Complaint No. 2 has been made to the defendants by mailing a copy thereof to their attorneys of record this 4th day of April, 1981.

/s/ Martha B. Gaunce

Martha B. Gaunce

FILED: April 8, 1981.

EXHIBIT 3 – NOTICE OF PROPOSED CERTIFICATE ACTION

Take notice that upon consideration of the report of investigation, it appears that you violated the Federal Aviation Regulations hereinafter specified by reason of the following circumstances: 1. You hold Airman Certificate Number 348609 with Commercial Pilot privileges and Airplane Single-Engine Land and Instrument ratings. 2. On June 27, 1979, you acted as pilot-in-command of civil aircraft N4295J, a Piper 28-140, owned by you, on flights in air commerce arriving and departing Cleveland-Hopkins Airport. 3. You arrived at Cleveland-Hopkins Airport for the purpose of securing a flight instructor reinstatement check-ride. You did not, however, have in your personal possession a current pilot certificate issued to you under Part 61, nor did you have in your

personal possession an appropriate current medical certificate issued under Part 67 of the Federal Aviation Regulations. 4. Upon the request of an FAA Inspector to see and examine your pilot's log, you refused to permit such inspection, which request was renewed and refusal repeated on July 17, 1979. 5. At the time of the flights described on June 27, 1979 you had not, within the preceeding 24 months, accomplished a flight review given to you in an aircraft for which you are rated by an appropriately certificated instructor or other person designated by the Administrator. You had not had your logbook endorsed by a person giving the review described above, certifying that you had satisfactorily accomplished the flight review. 6. Although you were specifically advised by the FAA inspector that you would be in violation of the regulations if you were to fly under the circumstances described above, you nevertheless departed Cleveland-Hopkins Airport without having the appropriate certificates in your personal possession, and in the process of departing were given a clearance including a provision to contact Departure Control on frequency 118.15. In addition to the clearance, just referred to, you were instructed by Air Traffic Control to contact Departure Control which you failed and refused to do.

By reason of the foregoing circumstances, you violated the following Federal Aviation Regulations: a. Section 61.3 (a), in that you, within the United States, acted as pilot in command of a civil aircraft when you did not have in your personal possession a current pilot certificate issued to you under Part 61 of the Federal Aviation Regulations. b. Section 61.3 (c), in that you acted as pilot in command of an aircraft when you did not have in your personal possession an appropriate current medical certificate issued under Part 67 of the Federal Aviation Regulations. c. Section 61.51 (d) (1), in that you did not present your logbook for inspection upon reasonable request by the Administrator or an authorized representative. d. Section 61.57 (a)(1), in that you acted as pilot in command of an aircraft when you had not, within the preceeding 24 months, accomplished a flight review given to you in an aircraft for which you were rated by an appropriately certified instructor or other person designated by the Administrator. e. Section 61.57 (a)(2), in that you

acted as pilot in command of an aircraft when you had not, within the preceeding 24 months, had your logbook endorsed by the person who gave you the review certifying that you had satisfactorily accomplished the flight review. f. Section 91.75 (a), in that you, as pilot in command, deviated from an air traffic control clearance without obtaining an amended clearance. g. Section 91.75 (b), in that in an area in which air traffic control is exercised, you operated an aircraft contrary to an air traffic control (ATC) instruction. h. Section 91.9, in that you operated an aircraft in a careless manner so as to endanger the life or property of another.

Please take notice that by reason of the foregoing violations you are alleged to have committed and pursuant to the authority vested in the Administrator of the Federal Aviation Administration by Section 609 of the Federal Aviation Act of 1958, as amended, we propose to revoke your Airman Certificate with all privileges and ratings with the further provision that no new certificate will be issued for a period of one (1) year.

Unless we receive, in writing, your choice of the alternatives provided and set forth on the enclosed information form, on or before January 23, 1980, you will be deemed in default, and this office will issue an Order revoking your Airman Certificate with all privileges and ratings as proposed above, with an effective date not earlier than 20 days after the issuance of the Order. This Notice does NOT revoke your certificate; however, if you wish to begin the revocation immediately, you must physically surrender your certificate to this office as provided in Option 1 of the enclosed information sheet.

CARL B. SCHELLENBERG, Regional Counsel

By: /s/

Alan G. Sumberg

Enclosures

EXHIBIT 4 – ORDER OF REVOCATION

It has been determined by the Administrator of the Federal Aviation Administration, acting by and through his Regional Counsel, that on the basis of all available information, you violated the Federal Aviation Regulations hereinafter enumerated in the following respects: 1. You hold Airman Certificate Number 348609 with Commercial Pilot privileges and Airplane Single-Engine Land and Instrument ratings.

2. On June 27, 1979, you acted as pilot-in-command of civil aircraft N4295J, a Piper 28-140, owned by you, on flights in air commerce arriving and departing Cleveland-Hopkins Airport.

3. You arrived at Cleveland-Hopkins Airport for the purpose of securing a flight instructor reinstatement check-ride. You did not, however, have in your personal possession a current pilot certificate issued to you under Part 61, nor did you have in your personal possession an appropriate current medical certificate issued under Part 67 of the Federal Aviation Regulations. 4. Upon the request of an FAA Inspector to see and examine your pilot's log, you refused to permit such inspection, which request was renewed and refusal repeated on July 17, 1979. 5. At the time of the flights described on June 27, 1979 you had not, within the preceeding 24 months, accomplished a flight review given to you in an aircraft for which you are rated by an appropriately certificated instructor or other person designated by the Administrator. You had not had your logbook endorsed by a person giving the review described above, certifying that you had satisfactorily accomplished the flight review. 6. Although you were specifically advised by the FAA inspector that you would be in violation of the regulations if you were to fly under the circumstances described above, you nevertheless departed Cleveland-Hopkins Airport without having the appropriate certificates in your personal possession, and in the process of departing were given a clearance

including a provision to contact Departure Control on frequency 118.15. In addition to the clearance, just referred to, you were instructed by Air Traffic Control to contact Departure Control which you failed and refused to do.

By reason of the foregoing circumstances, you violated the following Federal Aviation Regulations:

a. Section 61.3 (a), in that you, within the United States, acted as pilot in command of a civil aircraft when you did not have in your personal possession a current pilot certificate issued to you under Part 61 of the Federal Aviation Regulations. b. Section 61.3 (c), in that you acted as pilot in command of an aircraft when you did not have in your personal possession an appropriate current medical certificate issued under Part 67 of the Federal Aviation Regulations. c. Section 61.51 (d) (1), in that you did not present your logbook for inspection upon reasonable request by the Administrator or an authorized representative. d. Section 61.57 (a)(1), in that you acted as pilot in command of an aircraft when you had not, within the preceeding 24 months, accomplished a flight review given to you in an aircraft for which you were rated by an appropriately certified instructor or other person designated by the Administrator. e. Section 61.57 (a)(2), in that you acted as pilot in command of an aircraft when you had not, within the preceeding 24 months, had your logbook endorsed by the person who gave you the review certifying that you had satisfactorily accomplished the flight review. f. Section 91.75 (a), in that you, as pilot in command, deviated from an air traffic control clearance without obtaining an amended clearance. g. Section 91.75 (b), in that in an area in which air traffic control is exercised, you operated an aircraft contrary to an air traffic control (ATC) instruction. h. Section 91.9, in that you operated an aircraft in a careless manner so as to endanger the life or property of another.

CARL B. SCHELLENBERG, Regional Counsel
By: /s/ Pierre H. deVincentis
PIERRE H. deVINCENTIS, Attorney

APPEAL

You may appeal from this Order within twenty (20) days from the time of its service upon you. Your appeal must be filed within that time with the National Transportation Safety Board, Office of Administrative Law Judges, Waterfront Center, Suite 301, 1010 Wisconsin Avenue, N.W., Washington, D.C. 20007, pursuant to the Board's Rules of Practice in Air Safety Proceedings, Title 49 Code of Federal Regulations Part 821. A copy of your appeal must be furnished this office. Such appeal will stay the effectiveness of this Order.

You are hereby advised that a copy of this Order will be forwarded to the National Transportation Safety Board in the event you appeal and will be considered the Administrator's Complaint on Appeal.

EXHIBIT 5 – JUDGMENT

Gaunce V. deVincentis, *et al.*, CA 7th Cir., No. 81-1769

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." *See* Rule 34(a), Fed. R. App. P.; Circuit Rule 14(f). Appellant has filed such a statement and requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

Before BAUER, WOOD, and COFFEY, *Circuit Judges.*

PER CURIAM. The district court and the parties extensively discuss whether the procedures of the *Federal Aviation Act of 1958,* as amended, (the Act), which were invoked to revoke plaintiff-appellant's airman certificate, comport with the fifth amendment's due process requirements; and whether the defendants, Federal Aviation Administration (F.A.A.)

employees, are immune from a monetary damages claim. However the basic issue of whether the district court possessed subject matter jurisdiction has been ignored. This court has *sua sponte* considered this issue.[1] For the reasons stated below we vacate the district court's judgment and remand with instructions to dismiss the complaint for lack of subject matter jurisdiction.

I

Pursuant to 49 U.S.C. § 1429(a) the F.A.A. sent notice to appellant informing her of the proposed revocation of her Airman Certificate, for a period of one year, due to the following alleged violations of F.A.A. regulations: Operating an aircraft on two occasions, into and out of Cleveland-Hopkins Airport on June 27,, 1979, without having in her possession a current pilot or medical certificate (a violation of 14 C.F.R. § 61.3(a), (c)), failing to have accomplished a current biennial flight review (a violation of 14 C.F.R. §

1 We recently adopted Circuit Rule 9(b), which we hope will have the salutary effect of avoiding the pitfalls and drain on judicial resources evidenced in this case.

Circuit Rule 9(b) states:

Jurisdictional Summary. The brief of the appellant or petitioner will include, under an appropriate heading, a jurisdictional summary, which will appear before the statement of the case and shall include an explanation of the statutory basis for jurisdiction of the dictrict court (if applicable) and of this court, as well as other information relevant to jurisdiction, such as whether there has been a certification pursuant to Federal Rule of Civil Procedure 54(b) or 28 U.S.C.§ 1292(b).

Compare Fed. R. Civ. P. 8(a)(1) (a pleading setting forth a claim for relief shall contain a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it).

61.57(a)), violating air traffic control clearance and instruction (a violation of 14 C.F.R. § 91.75), twice refusing to present her pilot logbook for inspection after a reasonable request to do so made by an F.A.A. inspector (a violation of 14 C.F.R § 61.51 (d)), and careless operation so as to endanger the life and property of another by operating in the Cleveland-Hopkins Airport traffic area without maintaining communication with air traffic control (a violation of 14 C.F.R. § 91.75).

Pursuant to 14 C.F.R. § 13.19(c) the notice of the proposed revocation also informed appellant of several options available to her. The option selected by appellant was that of requesting an opportunity to be heard in an informal conference on July 18, 1980, with appellees acting in their respective capacities as F.A.A. counsel and aviation safety inspector. The F.A.A. issued its order of revocation that same day, based on its finding that nothing occurred at the informal conference to alter the proposed revocation order. The revocation order informed appellant that she might appeal to the National Transportation Safety Board (N.T.S.B.), and that an appeal within twenty days would stay the revocation order. Appellant chose not to appeal to the N.T.S.B. at that time. On November 30, 1980, appellant filed her appeal with the N.T.S.B. On December 3, 1980, appellant instituted this suit in the district court, which issued a judgment on May 6, 1981, granting appellees' summary judgment motion. On May 14, 1981, appellant filed her notice of appeal to this court of the May 6, 1981 district court judgment. On October 1, 1981, the N.T.S.B. issued an initial order affirming with modification the F.A.A. revocation order. The N.T.S.B. order, *inter alia,* suspended appellant's certification for 150 days and imposed upon her a re-examination requirement.

II

"[W]here Congress has provided a statutory procedure for the review of an administrative order, such procedure is exclusive." *Oling v. Air Line Pilots Ass'n.*, 346 F.2d 270, 276 (7th Cir.), *cert. denied*, 382 U.S. 926 (1965); *see Whitney National Bank v. Bank of New Orleans & Trust Co.*, 379 U.S. 411, 420 (1965). The F.A.A. acted in this case pursuant to 49 U.S.C. § 1429(a),[2] the statute authorizing reinspection, reexamination, amendment, suspension, and revocation of certification. The statute provides for giving deference to the F.A.A. and N.T.S.B., bodies possessing expertise in areas outside the conventional experience of judges, by requiring

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[2] 49 U.S.C. § 1429(a) provides in relevant part:

> The Administrator may . . . reexamine any civil airman. If, as a result of any such . . . reexamination, or if, as a result of any other investigation made by the Administrator, he determines that safety in air commerce or air transportation and the public interest requires, the Administrator may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type . . . airman certificate . . . . Prior to amending, modifying, suspending, or revoking any of the foregoing certificates, the Administrator shall advise the holder thereof as to any charges or other reasons relied upon by the Administrator for his proposed action and, except in cases of emergency, shall provide the holder of such a certificate an opportunity to answer any charges and be heard as to why such certificate should not be amended, modified, suspended, or revoked. Any person whose certificate is affected by such an order of the Administrator under this section may appeal the Administrator's order to the National Transportation Safety Board and the National Transportation Safety Board may, after notice and hearing, amend, modify, or reverse the Administrator's order if it finds that safety in air commerce or air transportation and the public interest do not require affirmation of the Administrator's order . . . The filing of an appeal with the National Transportation Safety Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the National Transportation Safety Board that an emergency exists . . . . The person substantially affected by the National Transportation Safety Board's order may obtain judicial review of said order under the provisions of section 1485 of this title, and the Administrator shall be made a party to such proceedings.

the completion of the administrative process, with a ruling by the N.T.S.B. where applicable, before commencing the judicial review proceeding.[3] This requirement was not met in this case. And most importantly, in plain disregard of the express terms of section 1486 of the Act, which prescribes direct and exclusive review in the court of appeals,[4] plaintiff instituted the present action in the district court. This action is in derogation of the well settled principle that collateral attacks upon administrative orders are not permissible. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 48-50 (1938); *Robinson v. Dow*, 522 F.2d 855, 858 (6th Cir. 1975); *Oling v. Air Line Pilots Ass'n.*, 346 F.2d at 276-277; *see Administrative Procedure Act* § 10(b), 5 U.S.C. § 703 (1976) ("The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action . . . in a court of

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[3] The issues raised by appellant are necessarily intertwined with the factual setting. Of importance to this case is the fact that the proceeding before the F.A.A. is of an informal nature, while the proceeding before the N.T.S.B. permits discovery and a full evidentiary hearing thus allowing for the development of a full record. *Compare* 14 C.F.R. § 13.19(c), (d), with 49 C.F.R. §§821.19-21, 821.38, 821.47. *See Robinson v. Dow*, 522 F.2d 855, 858 (6th Cir. 1975).

[4] 49 U.S.C. § 1486 provides in relevant part:

(a) Any order, affirmative or negative, issued by the Board or Administrator under this chapter . . . , shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

(d) Upon transmittal of the petition to the Board or Administrator, the court shall have exclusive jurisdiction to affirm, modify, or set aside the order complained of, in whole or in part, and if need be, to order further proceedings by the Board or Administrator . . . .

competent jurisdiction."); *see also Denberg v. United States Railroad Retirement Board,* 696 F.2d 1193 (7th Cir. 1983). It is clear from the statutory scheme established by Congress that the F.A.A. order was not subject to collateral attack in the district court. *Robinson v. Dow, supra; Oling v. Air Line Pilots Ass'n., supra.* Thus the district court lacked subject matter jurisdiction over the claims asserted by the plaintiff-appellant.

The statutorily prescribed requirements cannot be dispensed with merely because the administrative proceeding dealt with an agency's proof of specified regulatory violations, while appellant is raising a due process constitutional claim in the judicial proceeding. So long as effective means for judicial review are ultimately available where the constitutional claims can be raised, appellant may not dispense with the requirement of prior administrative review, otherwise judicial review would be an abstract process. "It is not axiomatic . . . that challenging the constitutionality of a statute on its face as opposed to its application will permit a litigant to bypass the administrative process since under cases such as this '[t]he effect would be that important and difficult constitutional issues would be decided devoid of factual content.'" *Robinson v. Dow,* 522 F.2d at 857-858, quoting *DuBois Clubs v. Clark,* 389 U.S. 309, 312 (1967); *see Peoria v. Gen'l Elec. Cablevision Corp.,* 690 F.2d 116, 121 (7th Cir. 1982).

For these reasons we vacate the district court's judgment and remand with instructions to dismiss the complaint for lack of subject matter jurisdiction.

III

Additionally it would be improper for us to assert our exclusive jurisdiction to decide on the merits the issues raised in this case. The Act's judicial review provision, 49 U.S.C. § 1486(a), calls for the filing of a petition in the court of appeals within sixty days of the conclusion of the administrative process, unless reasonable grounds for failure to do so are shown. The time requirement has been totally ignored in this case,[5] and no reasonable grounds for ignoring it have been shown. Not only has the time requirement not been complied with, but most importantly, there has been no notice of appeal filed in this court from a final decision of the administrative agency, as is required under 49 U.S.C. § 1486(a). We merely have a notice of appeal from a judgment of the district court. For us to exercise our exclusive jurisdiction under such circumstances we would, in effect, be rewriting the Act's judicial review provision.[6]

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[5] This case comes to us in a gnarled procedural posture: The F.A.A. order was issued on July 18, 1980. Plaintiff filed her appeal with the N.T.S.B. on November 30, 1980. On December 3, 1980, plaintiff filed her complaint in the district court below. The district court issued its order on May 6, 1981. Plaintiff filed her notice of appeal to this court on May 14, 1981. And on October 1, 1981 the N.T.S.B. issued its initial order, pursuant to 49 C.F.R. § 821.35(b)(10). It is unclear whether the initial decision became final because of the application of 49 C.F.R. § 821.43 (failure of either party to file a timely notice of appeal with the full Board, or the Board does not take the initiative, within twenty days, to review the initial decision).

[6] We note that 49 U.S.C. § 1486(b) places venue in the circuit court where "petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia." It is unclear from the record that had the jurisdictional requirements been satisfied venue would lie in this court.

The notice of appeal cannot be construed constructively as one from the N.T.S.B. order, rather than from the district court's order. The fact that, prior to issuance of our decision, but after notice of appeal to this court was filed, the N.T.S.B. issued what appears to be a final order, is not of jurisdictional consequence. Our approach is not pedantic. Elementary principles provide for jurisdiction to be established by the facts as they exist at the time suit is commenced, and jurisdiction is not conferred or divested by later changes. *Schlesinger v. Councilman*, 429 U.S. 738, 742 n. 5 (1975); *Clarke v. Mathewson*, 37 U.S. 164, 171 (1838); *Lister v. Comm'rs Court*, 566 F.2d 490, 493 (5th Cir. 1978); *Bowles v. Pogue Distillery Co.*, 63 F.Supp. 816 (E.D. Ky. 1945); *see generally* 2 J. Moore, *Moore's Federal Practice*, § 3.04, ¶ 3.06[1] (2d ed. 1982). It would be unprincipled if our jurisdiction was dependent on the happenstance of an agency rendering its final order subsequent to the filing of the notice of appeal, but prior to our consideration of the appeal.

IV

For the foregoing reasons we dismiss the appeal, vacate the district court's judgment, and remand the case to the district court with instructions to dismiss the complaint for lack of subject matter jurisdiction.

A true Copy:
Teste:

Clerk of the United States Court of
Appeals for the Seventh Circuit

EXHIBIT 6 – MEMORANDUM OPINION AND ORDER

Martha B. Gaunce, *pro se,* brings this action against Pierre H. deVincentis and Jack T. Parrish, employees of the Federal Aviation Administration ("FAA") in their individual capacities. In her second amended complaint[1] the plaintiff alleges, *inter alia,* that the defendants conspired to deprive her of due process by revoking her airman certificate without presenting any evidence of wrongdoing. She alleges further that she was denied the opportunity to obtain any evidence to substantiate or deny the allegations raised by the proposed revocation letter.

The plaintiff was given notice by a letter dated January 8, 1980, pursuant to 14 C.F.R. §13.19(c), of the FAA's proposed revocation of plaintiff's airman certificate as a result of several violations of FAA requirements. These violations, enumerated in the letter, included, *inter alia,* not having a current pilot certificate or medical certificate and refusal to permit inspection of her pilot's log. *See* Exhibit A, Brief of Defendants in Support of Motion to Dismiss. Of the various options available to her, plaintiff requested and received a hearing at an informal conference with the defendants acting in their capacity as FAA counsel. 14 C.F.R. §13.19(c) (4). The informal conference was held on July 18, 1980 at the office of FAA Regional Counsel in Des Plaines, Illinois. Nothing occurred at the informal conference to alter the proposed revocation order. An order of revocation was issued on the same day.

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1. The court hereby grants the plaintiff leave to file her second amended complaint captioned, "Amended Complaint No. 2" and filed on April 6, 1981.

The revocation order informs the plaintiff of her right to appeal to the National Transportation Safety Board ("NTSB"). It also explains that a timely appeal would stay the revocation order. After receiving notice of the proposed revocation order, plaintiff instituted civil actions in the United States District Court and the Circuit Court of Appeals for the District of Columbia. Subsequently, these cases were dismissed. Currently, plaintiff has an appeal pending before the NTSB.

This cause is currently before the court on defendants' motion to dismiss or, in the alternative, for summary judgment. In deciding this motion, this court will consider materials that go beyond the face of the complaint; we treat this motion, therefore, as one for summary judgment. R. 56, Fed.R.Civ.P.

Defendants assert that plaintiff's allegation that existing FAA procedures violate her due process rights is incorrect. Defendants then seek to establish that the procedures followed in the instant action were in compliance with FAA procedure as set out in 49 U.S.C. §1429(a), 14 C.F.R. §13.19, and 49 C.F.R. §821. We agree. Upon receiving notice of the proposed revocation order, plaintiff was informed of her right to an informal conference "to be heard as to why the certificate should not be . . . revoked." 14 C.F.R. §13.19(c). The informal conference was held and an order of revocation was issued. The revocation order notified the plaintiff of her right to appeal and that such an appeal would stay the effectiveness of the revocation order. She did not appeal at that time.

It is apparently plaintiff's position that she was denied due process because she was issued a revocation order without first being provided with a full scale evidentiary hearing. The law is clear that the procedural requirements of due process are flexible. Mathews v. Eldridge, 424 U.S. 319 (1976). The court must weigh the seriousness of the harm to the individual, the governmental interest at stake and the risk of

deprivation as a result of the procedures employed. *Id.* at 335. While the plaintiff is entitled to some form of hearing prior to being deprived of a property interest, the substance and timing of the hearing may vary with the circumstances. *Id.* at 333.

Applying this standard, particularly in light of additional cases discussing due process procedures, *see, e.g., Memphis Light, & Water Division v. Craft,* 436 U.S. 1 (1978); *Goss v. Lopez,* 419 U.S. 565 (1965); *Goldberg v. Kelly,* 397 U.S. 254 (1970), this court holds that, to the extent that plaintiff possesses a property interest in her airman certificate, she was not denied her right to due process. This opinion is based on the fact that plaintiff was entitled to, and received, an informal predetermination hearing. She was also informed of her absolute right to an immediate stay of the revocation order by appealing to the NTSB and requiring the FAA to prove its charges at a full evidentiary hearing. These procedural opportunities are a sufficient measure of due process to defeat plaintiff's claim.

For the aforementioned reasons, defendants' motion for summary judgment is hereby granted. The cause is dismissed.

ENTER

Original signed by Frank J. McGarr
United States District Judge

DATED: May 6, 1981

EXHIBIT 7 – NOTICE OF APPEAL

Notice is hereby given that Martha B. Gaunce, plaintiff above named, appearing *In Propria Persona,* hereby appeals to the Supreme Court of the United States, pursuant to Title 28, United States Code, Section 1254(1), from the final judgment entered in this action by the United States Court of Appeals for the Seventh Circuit on the 10th day of June, 1983.

Martha B. Gaunce, *In Propria Persona,*
9348 Santa Monica Blvd. #101
Beverly Hills, California 90210

DATED: August 23, 1983.
FILED: August 29, 1983.

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
) ss..
COUNTY OF LOS ANGELES)

I HEREBY CERTIFY that delivery of the foregoing Notice of Appeal to the Supreme Court of the United States has been made by mailing a copy thereof to the following:

Thomas F. Strubbe
Clerk of Court
United States Court of Appeals
for the Seventh Circuit
United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

Dan K. Webb
United States Attorney
United States Courthouse
219 South Dearborn St.
Chicago, Illinois 60604

J. Paul McGrath
Solicitor General of the United States
Department of Justice
Washington, D. C. 20530

this 24th day of August, 1983.

/s/
Martha B. Gaunce
9348 Santa Monica Blvd. #101
Beverly Hills, California 90210

Subscribed and sworn to before me

this 24th day of August, 1983.

/s/
Notary Public

My Commission Expires: _____

EXHIBIT 8 – BRIEF FOR APPELLANT,
CASE NO. 81-1769, CA 7th CIR.

Page 50: Contention # 5 – "No response to the government's Supplemental Memorandum in Support of Defendants' Motion to Dismiss or for Summary Judgment was entertained by the district court judge prior to the dismissal of the action by the district court judge at the status hearing of 22 April 1981 denying Mrs. Gaunce due process of law.

This issue was not addressed by the United States Court of Appeals for the Seventh Circuit.

Page 80: Contention # 5 – NO RESPONSE TO THE GOVERNMENT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGMENT WAS ENTERTAINED BY THE DISTRICT COURT JUDGE PRIOR TO THE DISMISSAL OF THE ACTION BY THE DISTRICT COURT JUDGE AT THE STATUS HEARING OF 22 APRIL 1981 DENYING MRS. GAUNCE DUE PROCESS OF LAW.

The court granted summary judgment to the defendants as stated in the Memorandum Opinion and Order. In point of fact, this is wrong. The district court made an untimely adjudication of the action upon the merits of the action.

The defendants' supplemental response, Supplemental Memorandum in Support of Defendants' Motion to Dismiss or for Summary Judgment was served upon Mrs. Gaunce by placing a copy in the United States mail on 10 April 1981. Twelve days later and upon the basis of arguments presented in such supplemental response the district court dismissed the action.

Rule 56(c), FRCP, provides: "The motion shall be served at least 10 days before the time fixed for hearing." In addition to the 10 days provided by Rule 56(c), *supra*, Rule 6(e), FRCP, provides an additional period of time of 3 days under certain enumerated circumstances, as follows: "Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a

notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

All prerequisites required by Rule 6(e) for the 3 day period to be added to Rule 56(c) are present in this case. The supplemental response was served upon Mrs. Gaunce by mail, and such supplemental response was a document to which Mrs. Gaunce was entitled to take the time limit within which to respond thereto prescribed by Rule 56(c), FRCP.

Consequently, Rule 6(e) provided Mrs. Gaunce with a period of time of thirteen days within which to prepare a response to the Motion for Summary Judgment as supplemented by the Supplemental Memorandum in Support of Defendants' Motion to Dismiss or for Summary Judgment.

Due process requirements of the Fifth Amendment to the Constitution of the United States mandate compliance with and conformity to the Federal Rules of Civil Procedure.

The cause was dismissed by the action of the district court judge 12 days after the date on which the supplemental response prepared by the government was entered of record.

The district court made an untimely adjudication of the action upon the merits of the action as no response to the government's Supplemental Memorandum in Support of Defendants' Motion to Dismiss or for Summary Judgment was entertained by the district court judge prior to the dismissal of the action by the district court judge at the status hearing of 22 April 1981 denying Mrs. Gaunce due process of law.

Additionally, Rule 56(c), FRCP, provides in part: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Mrs. Gaunce requested specific facts regarding the employment status of the defendants, Mr. deVincentis and Mr. Parrish, which were not responded to be the defendants and were, therefore, admitted as fact, pursuant to Rule 36(a), FRCP,

the government entered into the record as fact the Notification of Personnel Action as evidence of the employment status of Mr. deVincentis.

This is a genuine issue of material fact.

The defendants are not entitled to judgment as a matter of law.

EXHIBIT 9

PIERRE H. DE VINCENTIS
ATTORNEY AT LAW

1424 Wesley Avenue
Evanston, IL 60201

(312) 491-1327

EXHIBIT 10

I. UNITED STATES OF AMERICA

THIS CERTIFIES THAT 288164601 IV. MARTHA BLAIR GALINCE V. 514 WEST 13 AVENUE WILLISTON ND 58801

DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES	SEX	NATIONALITY VI.
09-26-22	66 IN	145	BROWN	BROWN	F	USA

IX HAS BEEN FOUND TO BE PROPERLY QUALIFIED TO EXERCISE THE PRIVILEGES OF

II. COMMERCIAL PILOT III. CERT NO 348609

RATINGS AND LIMITATIONS

XII. AIRPLANE SINGLE ENGINE LAND INSTRUMENTS

XIII.

VII. SIGNATURE OF HOLDER

X DATE OF ISSUE 07-27-77

VIII. John L. McLucas ADMINISTRATOR

APPROVED FOR EXCEPTION
U.S. CIVIL SERVICE COMMISSION
FPM Chap. 293

(ALL DATES IN YY-MM-DD SEQUENCE)

1 NAME (LAST, FIRST, MIDDLE)	SEX	2 (AGENCY USE)	3 BIRTH DATE	4 CIT AND SSAN
DEVINCENTIS, PIERRE H	M	72201	41-07-10	1 151-20-0885

5 VETERAN PREFERENCE	6 TENURE	7 SERV COMP DATE	8 AWARD AMOUNT
2 (1 NO, 2 5 PT, 3 10 PT DISAB, 4 10 PT COMP 6-30 PT COMP)	2	72-12-22	PR 37

9 FEGLI	10 RETIREMENT	11 (FOR USE CS)
3 (1 COVERED (Regular only — declined Optional), 2 INELIGIBLE, 3 WAIVED, 4 COVERED (Reg & Opt))	1 (1 CS, 2 FICA, 3 FS, 4 NONE, 5 OTHER)	—

12 CODE	NATURE OF ACTION
170D	EXC APPT

13 EFFECTIVE DATE	14 CIVIL SERVICE OR OTHER LEGAL AUTHORITY
80-07-13	SCH A 213.3102(D)

15 FROM POSITION TITLE AND NUMBER

16 PAY PLAN/SER/FUNC	17 (a) GRADE	(b) STEP	18 PAY BASIS AND SALARY

19 TO POSITION TITLE, NUMBER AND SUPERVISORY CODE

GENERAL ATTORNEY (AERONAUTICS)
PD NO = GL-0594 BU NO = GLDS0071 CST CNTR = 0100
SUPV CODE 8

20 PAY PLAN/SER/FUNC	21 (a) GRADE	(b) STEP	22 PAY BASIS AND SALARY
GS 0905	14	01	PA $34,713

23 NAME AND LOCATION OF EMPLOYING OFFICE

FEDERAL AVIATION ADMINISTRATION ORG = GL007
GREAT LAKES REGION
2300 EAST DEVON, DES PLAINES, ILLINOIS 60018 POS SENS = SN
REGIONAL COUNSEL

24 DUTY STATION (City-State)	25 LOCATION CODE
DES PLAINES, ILLINOIS	17-2300-021

26 APPROPRIATION	27 POSITION OCC (1 PERM, 2 TEMP)	28 APPOINTMENT AUTHORITY
001.0/0100/921F/1111	2	

29 RETIRED UNIFORM SERVICE (ACCESSIONS ONLY)
A - DATE | B - DESIGNATION | C - COMPONENT | D - GRADE

30 CPDF DATA ELEMENTS				
A - WORK SCHEDULE: F	B - PAY RATE DETERMINANT	C - SPECIAL PROGRAM: 00	D - APPOINTMENT EFF DATE (YYMMDD)	80-07-14

32 EDUCATION (ACCESSIONS AND CHANGES ONLY)		
A - ACADEMIC LEVEL: 15	B - DISCIPLINE: 1401	C - YEAR OF DEGREE: 66

33 REMARKS

GENERAL COUNSEL, C-1, SCHEDULE A APPOINTMENT APPROVAL LETTER IS ATTACHED. TRIAL PERIOD COMPLETED. NACI INITIATED 800714. REQUEST NUMBER GL-7-80-8.

WELCOME TO THE FEDERAL AVIATION ADMINISTRATION

34 ORGANIZATION DESIG (EMPLOYING DEPARTMENT OR AGENCY)	37 SIGNATURE (OR AUTHORIZED SIGNATURE) AND TITLE
TD-03 DEPARTMENT OF TRANSPORTATION	Sheila M. Peidek
35 SUBMITTING OFFICE NUMBER 3251	36 DATE 80-07-08
	PERSONNEL CLERK, PERS MGT SPEC IV

1. EMPLOYEE COPY

Enclosure 1

EXHIBIT 11
Standard Form 50 (9-74) Notification of Personnel Action, DEVINCENTIS, PIERRE H. dated 80-07-14.

ARTICLE III, SECTIONS 1 AND 2 OF THE CONSTITUTION

The jurisdiction of the Supreme Court of the United States of America is founded upon Article III, Section 1 of the Constitution which states that: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." In Section 2 of that same Article the judicial power is more particularly defined:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more states; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof; and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

AMENDMENT V OF THE CONSTITUTION

The Constitution of the United States of America, Amendment V states as follows:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation."

CONSTITUTION OF THE STATE OF ILLINOIS, 1970

The Constitution of 1970 of the State of Illinois states in pertinent part as follows:

Article 1, § 1 Inherent and Inalienable Rights

All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

§ 2 Due Process and Equal Protection

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

§ 12 Right of Remedy and Justice

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

The Criminal Code of 1968 of the State of Illinois, S.H.A. ch. 38, § 1-4 Civil Remedies Preserved, states as follows:

This Code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered in a civil action, for any conduct which this Code makes punishable, and the civil injury is not merged in the offense. Laws 1961, p. 1983, § 1-4, eff. Jan. 1, 1962.

TITLE 5, UNITED STATES CODE, SECTION 554 ADJUDICATIONS

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved –

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court; (2) the selection or tenure of an employee, except a hearing examiner appointed under section 3105 of this title; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; (6) the certification of worker representatives. (b) Persons entitled to notice of an agency hearing shall be timely informed of –

(1) the time, place and nature of the hearing; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceedings shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for – (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceedings, and the public interest permit; and (2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 558 of this article. (d) The employee who presides at the reception of evidence pursuant to section 557 of this title shall make the recommended decision or initial decision required by section 558 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not – (1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or (2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.
An employee, or agent, engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply – (A) in determining applications for initial licenses; (B) to proceedings involving the validity or application or rates, facilities, or practices of public utilities or carriers; or (C) to the agency or a member or members of the body comprising the agency. (e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

TITLE 5, UNITED STATES CODE,
SECTION 556(d):

Except as otherwise provided by statue, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received but the agency as a matter of policy shall provide for the exclusion or irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly cause such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

TITLE 14, CFR, § 13.19 CERTIFICATE ACTION.

(a) Under section 609 of the Federal Aviation Act of 1958 (49 CFR § 1429), the Administrator may reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, and may re-examine any civil airman. Under section 501(e) of the FA Act, any Certificate of Aircraft Registration may be suspended or revoked by the Administrator for any cause that renders the aircraft inelegible for registration.

(b) If, as a result of such reinspection, re-examination or other investigation made by the Administrator under section 609 of the FA Act, the Administrator determines that the

public interest and safety in air commerce requires it, the Administrator may issue an order amending, suspending, or revoking, all or part of any type of certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate or air agency certificate. This authority may be exercised for remedial purposes in cases involving the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.) or regulations issued under that Act. The authority is also exercised by the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Regional Counsel concerned. If the Administrator finds that any aircraft registered under Part 47 of this chapter is ineligible for registration or if the holder of a Certificate of Aircraft Registration has refused or failed to submit Part 1, AC Form 8050-73, as requred by § 47.44 of this chapter, the Administrator issues an order suspending or revoking that certificate. This authority as to aircraft found ineligible for registration is also exercised by the Aeronautical Center Counsel.

(c) Before issuing an order under paragraph (b) of this section, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under Title V of the FA Act) advises the certificate holder of the charges or other reasons upon which the Administrator bases the proposed action and, except in an emergency, allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, or revoked. The holder may, by checking the appropriate box on the form that is sent to the holder with the notice of proposed certificate action, elect to – (1) Admit the charges and surrender his or her certificate; (2) Answer the charges in writing; (3) Request that an order be issued in accordance with the notice of proposed certificate action so that the certificate holder may appeal to the National Transportation Safety Board, if the charges concerning a matter under Title VI of the FA Act; (4) Request an opportunity to be

heard in an informal conference with the FAA counsel; or (5) Request a hearing in accordance with Subpart D of this part if the charges concern a matter under Title V of the FA Act.

Except as provided in § 13.35(b), unless the certificate holder returns the form and, where required, an answer or motion, with a postmark of not later than 15 days after the date of receipt of the notice, the order of the Administrator is issued as proposed. If the certificate holder has requested an informal conference with the FAA counsel and the charges concern a matter under Title V of the FA Act, the holder may after that conference also request a formal hearing in writing with a postmark of not later than 10 days after the close of the conference. After considering any information submitted by the certificate holder, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under Title V of the FA Act) issued the order of the Administrator, except that if the holder has made a valid request for a formal hearing on a matter under Title V of the FA Act initially or after an informal conference, Subpart D of this part governs further proceedings. (d) Any person whose certificate is affected by an order issued under this section may appeal to the National Transportation Safety Board. If the certificate holder files an appeal with the Board, the Administrator's order is stayed unless the Administrator advises the Board that an emergency exists and safety in air commerce requires that the order become effective immediately. If the Board is so advised, the order remains effective and the Board shall finally dispose of the appeal within 60 days after the date of the advise. This paragraph does not apply to any person whose Certificate of aircraft Registration is affected by an order issued under this Section.

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA

ss.

COUNTY OF LOS ANGELES

I HEREBY CERTIFY that delivery of the foregoing Jurisdictional Statement has been made to the attorneys of the record for the appellees:

J. Paul McGrath	Dan K. Webb
Solicitor General	United States Attorney
Department of Justice	United States Courthouse
Washington, D. C.	219 South Dearborn Street
20530	Chicago, Illinois 60604

by mailing three copies thereof to each of the above-named attorneys of record for the appellees this 8th day of September, 1983, with return receipt requested.

/s/ Martha B. Gaunce

Martha B. Gaunce
In Propria Persona
9348 Santa Monica Blvd. #101
Beverly Hills, California 90210
Telephone: (213) 273-3033

/s/

Notary Public
My Commission Expires: